

**MEMORANDUM OF AGREEMENT  
ON STUDIES AND PREPARATORY ACTIONS FOR  
CONVEYANCE OF PROPERTY AT MCAS MIRAMAR  
FOR  
ELECTRICITY GENERATING PLANT CONSTRUCTION  
BETWEEN  
ENPEX CORPORATION  
AND  
THE DEPARTMENT OF THE NAVY  
MARINE CORPS AIR STATION MIRAMAR  
AND  
SOUTHWEST DIVISION, NAVAL FACILITIES  
ENGINEERING COMMAND**

**MAY 5, 2004**

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BETWEEN  
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MARINE CORPS AIR STATION MIRAMAR, CALIFORNIA  
AND  
SOUTHWEST DIVISION, NAVAL FACILITIES ENGINEERING COMMAND**

**I. INTRODUCTION.**

A. This Memorandum of Agreement (MOA) between the Department of the Navy (DON) and ENPEX Corporation (ENPEX), covers the first two phases of studies and consideration of a proposal by ENPEX to procure from the Department of the Navy a parcel of land situated aboard Marine Corps Air Station Miramar (MCAS Miramar) on which to construct an electricity generating plant ("the proposed project"). This MOA is based on and subject to the authority conferred upon the Secretary of the Navy by Congress in section 2831 of Public Law 107-314. It is understood that the completion and evaluation of the studies identified in this MOA is a preliminary step to any further consideration of the proposed land conveyance and that this MOA does not obligate either party beyond the express terms of the MOA. ENPEX must conclusively prove to the DON that the proposed power plant would not adversely impact current or future operating capabilities at MCAS Miramar. ENPEX acknowledges that should the DON determine, at its sole discretion, that the proposed project may adversely impact current or future military operations, training, or support activities aboard MCAS Miramar, further

**consideration of the proposed land conveyance may be terminated without further obligation to the DON, and that no funds expended pursuant to this MOA will be refunded to ENPEX.**

**B. The two phases covered by this MOA are:**

**Phase I: Feasibility Study**

**Phase II: Siting Study**

**C. At the conclusion of Phase I, the DON and ENPEX will decide whether to proceed to Phase II. At the conclusion of Phase II, the DON and ENPEX will decide whether to enter a Memorandum of Agreement to cover subsequent phases including Environmental Studies, Documentation and Compliance; Identification of Consideration; and Conveyance.**

**D. ENPEX shall make funds available, according to the terms in section II Funding, below, to cover all costs, including administrative costs, associated with implementing this MOA. The studies, analyses, and other services covered by this MOA will be performed by the U.S. Government, including but not limited to Southwest Division of the Naval Facilities Engineering Command (SWDIV), or by qualified firms under contract thereto.**

**E. The studies and evaluations conducted pursuant to this MOA shall be based upon data and plans provided by ENPEX with regard to its proposed project. Within 30 days from the date on which this MOA is signed, ENPEX shall provide to the DON its most current and complete technical plans for the proposed project. That information will be reviewed by appropriate subject matter specialists to**

determine if sufficient data exists to proceed with the detailed studies necessary to proceed with Phase I. If the data are insufficient, ENPEX will be responsible to provide sufficient additional information in a timely fashion to allow studies to proceed. Any information that is proprietary in nature must be marked as such. ENPEX consents to the use and distribution of such plans and associated technical data within the Government and to its contractors as necessary to fulfill the purpose of this MOA or in connection with any future conveyance. Although the DON agrees to take appropriate measures to protect such plans and data from improper disclosure, it shall be held harmless in the event such disclosure occurs. ENPEX further acknowledges that the plans and data provided to the DON pursuant to this MOA may be used as the basis for additional terms or conditions in any future conveyance to ensure that the proposed project is consistent with any conclusions that were reached based upon such plans or data.

## **II. FUNDING.**

A. ENPEX shall tender and SWDIV shall accept checks made payable to the U.S. Department of Treasury as advance funding prior to the beginning of each phase as described in this MOA. Upon receipt of ENPEX's check, SWDIV financial personnel will establish and maintain an account from which the funds will be made available for the purpose of fulfilling objectives as prescribed herein. The check will be based on an estimate as determined by SWDIV project management and agreed upon by ENPEX to cover the full estimated amount for contract awards, materials,

and labor (direct and overhead) costs associated with each phase for SWDIV and other DON personnel; plus, an additional 20% of total estimated costs to cover any potential contingencies that may arise throughout the phase. Agreed upon upward adjustments will be made as needed. At the completion of each phase, any unused funds will either be returned to ENPEX or maintained for use in the subsequent phase.

B. SWDIV's project leader will provide ENPEX a detailed expenditure report in an acceptable format on a quarterly basis, which will also serve as an audit trail of the agreed-upon expenditures related to each phase of the MOA. ENPEX agrees that funding of this MOA shall not create a guarantee of any specific result or provide a right or basis for prior review, approval, or restriction for the products, findings, recommendations or decisions stemming from the effort.

C. Failure to agree upon cost estimates or to provide sufficient funds for projected obligations shall be the basis for a unilateral termination of this MOA.

D. Upon completion of Phase I and a mutual decision to go forward, the same process will be applied for Phase II.

### **III. PHASE I - FEASIBILITY STUDY.**

The feasibility study will identify areas of the air station that meet the basic criteria for gas turbine powered electric generation plant and determine which of the areas are not suitable for the proposed project. These studies will include analyses of known mission-driven constraints as well as additional studies to be prepared to

address the potential incompatibility of the proposed project on existing and foreseeable operations. The additional studies to be prepared will include but not be limited to the following:

**A. Obstruction Hazards.** This study will determine and evaluate all potential conflicts that may arise from the proposed locations of all ENPEX structures associated with the proposed project. The studies will include but not be limited to airfield traffic patterns, individual aircraft operations and direct over flights by aircraft carrying live ordnance. It is imperative that there be no impact to current or future traffic patterns and operations. The study will determine how ENPEX will comply with local, State and Federal rules and regulations regarding structures in and around airports and airport traffic routes. Particular attention will be paid to Federal Aviation Administration (FAA) Regulations at 14 C.F.R. Part 77, dealing with imaginary surfaces restrictions, as well as FAA Terminal Instrument Procedures (TERPS) restrictions. Results of the study will require validation by the FAA and other appropriate regulatory entities. Notwithstanding regulatory validation, the DON shall determine whether adverse impacts render the proposed project infeasible.

**B. Visibility/Thermal Hazards.** This study will determine and evaluate potential hazards that may be caused by smoke or thermal plumes from the proposed project. This study will address the effects of smoke and thermal plumes on visibility and air stability related to air traffic, as well as any other adverse impact. Results of the study will require validation by the FAA and any other

appropriate regulatory entities. Notwithstanding regulatory validation, the DON shall determine whether adverse impacts render the proposed project infeasible.

**C. Radio Magnetic Interference.** This study will determine and evaluate the potential for Radio Magnetic Interference (RMI) interfering with or disrupting aircraft navigation, as well as ground based navigational aids aboard MCAS Miramar. This study will include but not be limited to, TPN-59 Advance Warning Radar, AN/FPN-63 Precision Radar, AN/TPN-22 Precision Radar, ASR-9 Surveillance Radar, and AN/TPS-73 Surveillance Radar. All relevant types of navigational aids will be addressed in this study. Results of the studies will require validation by the FAA and any other appropriate regulatory entities. Notwithstanding regulatory validation, the DON shall determine whether adverse impacts render the proposed project infeasible.

**D. Ground Based Facility Lighting.** This study will determine and evaluate the potential for ground based lighting interfering with or distracting pilots during operations at night in and around MCAS Miramar approach and departure corridors and flight patterns. This study will cover unaided night operations as well as those that are conducted with the use of any night vision enhancing devices. Results of the study will require validation by the FAA and any other regulatory entities. Notwithstanding regulatory validation, the DON shall determine whether adverse impacts render the proposed project infeasible.

**E. Hazardous Electro-Magnetic Radiation to Ordnance.** This study will determine and evaluate the effects of Hazardous Electro-Magnetic Radiation to

**Ordnance/Fuels/Personnel (HERO/HERF/HERP). This study will address all possible radiation hazards that may result from the proposed project at any proposed location aboard MCAS Miramar. The Radiation Hazards (RADHAZ) and Explosive Ordnance offices of MCAS Miramar will ensure compliance with all regulations and will validate the results of the study. The DON shall determine whether adverse impacts render the proposed project infeasible.**

**F. Bird and Animal Strike Hazards. This study will determine the effects of the proposed project on the MCAS Miramar Bird and Animal Strike Hazard (BASH) program. The potential for collisions between aircraft and birds/waterfowl necessitates specific action as determined by FAA Regulations and local/state wildlife agencies (USDA Wildlife Services). Results of the study will require validation by the USDA Wildlife Services and any other appropriate regulatory entities. Notwithstanding regulatory validation, the DON shall determine whether adverse impacts render the proposed project infeasible.**

**G. Proximity to Existing and Proposed Rifle/Pistol Ranges and Nuclear, Biological, and Chemical Training Facilities. This study will determine and evaluate the potential hazards associated with the proposed project's proximity to existing MCAS Miramar rifle and pistol ranges, nuclear/biological/chemical (NBC) training facilities, and proposed training facilities. The DON shall determine whether adverse impacts render the proposed project infeasible.**

**H. Impact on Potential Family Housing Sites. This study will determine and evaluate the impact of the proposed project on the suitability of other MCAS**



**Miramar sites for development as military family housing. The DON shall determine whether adverse impacts render the proposed project infeasible.**

**I. Future Requirements. This study will evaluate the impact of the proposed project on potential future Marine Corps land use requirements; the suitability of MCAS Miramar for future aircraft, navigation, and weapons systems (including the Joint Strike Fighter and the MV-22 Osprey); and foreseeable mission changes. - Results of the study will require validation by the FAA and all other appropriate regulatory entities to ensure compliance with all regulations. Notwithstanding regulatory validation, the DON shall determine whether adverse impacts render the proposed project infeasible.**

#### **IV. PHASE II – SITING STUDY.**

**A. Upon mutual agreement of the DON and ENPEX, the process will proceed to Phase II (Siting Study). The Siting Study will include the collection and evaluation of information necessary to determine the suitability of particular sites aboard MCAS Miramar for the proposed project and identify alternative generating facilities sites. Such collection and evaluation will be performed by the U.S. Government and or qualified firms under contract to the DON. The DON retains sole discretion to determine whether any particular site is feasible and appropriate for further analysis in subsequent Phases, based on the evaluation criteria stated below as well as adverse impacts identified as a result of the studies undertaken in Phase I.**

**B. ENPEX will provide all the design, construction, and operational criteria needed to identify potential sites for the proposed project. These criteria will include but not be limited to the size of parcel needed; access/easements to gas lines, sewer, and water lines; and other constraints associated with developing a site for electric power generation.**

**C. Evaluation criteria for each potential site will include but not be limited to:**

- 1. Information gathered during Phase I (Feasibility Study).**
- 2. The consistency of the proposed project with the MCAS Miramar Master Plan, MCAS Miramar Integrated Natural Resource Management Plan, Air Installation Compatible Use Zones (AICUZ) considerations, Federal and station policies surrounding land use compatibility (i.e. industrial zoning), and DON restrictive use easements applicable to off-base parcels in the proximity of MCAS Miramar.**
- 3. The presence of unexploded ordnance, and the cost of any necessary Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) response.**
- 4. The presence of contamination that would require remediation under CERCLA, or the Resource Conservation and Recovery Act (RCRA), and the cost of such remediation.**
- 5. Security issues including but not limited to site access, emergency services, and MCAS Miramar physical security.**

**V. FAIR MARKET VALUE OF LAND OR REAL PROPERTY TRANSFER.**

No costs, obligations, commitments, or expenditures by ENPEX under this MOA shall be applied toward the fair market value of any conveyance that may later occur pursuant to the authority under section 2831 of Public Law 107-314.

**VI. MODIFICATION, TERMINATION, AND COSTS**

This MOA may be modified upon the mutual agreement of the DON and ENPEX.

This MOA may be terminated upon fourteen days written notice by either the DON or ENPEX. In the event this MOA is terminated, or in the event either the DON or ENPEX determines not to proceed from one Phase to the next, the DON shall not be liable for any costs or obligations incurred by or on behalf of ENPEX.

**VII. NOTICE.**

To provide and receive notices, the following is provided:

**Commanding General, Marine Corps Air Station Miramar**

**AC/S G-4 I&L (Code 5EA)**

**PO Box 452001**

**San Diego, Ca 92145-2001**

**(858) 577-6678**

Commander, Southwest Division, Naval Facilities Engineering Command

Office of Counsel

1220 Pacific Highway


San Diego, CA 92132

(619) 532-4517


ENPEX Corporation

by:   
RICHARD H. HERTZBERG, President      date

DEPARTMENT OF THE NAVY  
Marine Corps Air Station Miramar

by:  3 MARCH 2004  
PAUL C. CHRISTIAN      date  
Colonel, U.S. Marine Corps  
Acting Commanding General

DEPARTMENT OF THE NAVY  
Southwest Division  
Naval Facilities Engineering Command

by:  5 MAY 2004  
C. SCHANZE      date  
Captain (CEC) U.S. Navy  
Commander